

**REMARKS**

**A. Allowable Subject Matter**

Applicants again appreciate the Examiner's acknowledgment that the subject matter of claims 4, 6, 9, 10, 15, 17, 20, 21, 28, 30, 33 and 34 would be allowable if amended and placed into independent form. However, Applicants submit that these claims as well as their respective independent and intervening claims are allowable without such amendment for at least the following reasons.

**B. The §103 Rejections**

Claims 1-3, 5, 7, 8, 11-14, 16, 18-19, 22-27, 29, 31-32, and 35-36 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of U.S. Patent Publication No. 2020102976 to Newbury et al. ("Newbury") in view of U.S. Patent No. 5,805,993 to Chepantier ("Chepantier"). The Applicants respectfully disagree and traverse these rejections for at least the following reasons.

In the Office Action the Examiner acknowledges that Newbury fails to disclose the feature of adjusting a transmission characteristic threshold in response to the value of a first balancing metric relative to a second balancing metric ("adjustment step"). To make up for this deficiency in Newbury the

Examiner relies upon Chepantier. Applicants do not agree that Chepantier discloses the feature relied upon by Examiner.

Initially, Applicants note that Chepantier does not disclose balancing metrics. In Chepantier, a value of a parameter representative of speed is compared with a threshold. ( *see* col. 1 lines 60-67 to col. 2 lines 1-5). Means is provided to vary the threshold in accordance with the load of a cell. *Id.* ( *see* also Figure 2). However, a “value of a parameter” is not a “balancing metric.” A “balancing metric” in accordance with Applicants’ invention is used to determine whether there is a system balance between two layers. Specification at ¶18. The balancing metric depends on *multiple* characteristics, not a single characteristic from a single cell as in Chepantier. Specification at ¶22-23.

Additionally, Chepantier does not disclose adjusting a transmission characteristic threshold based on a relative comparison. In the Applicants’ invention a transmission characteristic threshold is adjusted in response to the value of a first balancing metric *relative* to a second balancing metric as per Claim 1. In Chepantier, the specified threshold may be varied in accordance with a cell load – a single value -- col. 2 lines 1-5, and figure 2, whereas in the Applicants’ invention the specified threshold is adjusted based on *two* values represented by first and second balancing metrics.

Finally, in the Applicants’ invention the use of a balancing metric is to determine whether there is a *system balance* between different layers.

Specification at ¶18. In contrast, in Chepantier a value of a parameter representative of the speed of a mobile station is used to decide if it is necessary to command a cell level change, not to establish a system balance. (see, e.g., col 1 lines 60-67). According to Figure 2, cell change commands occur when the host cell is near capacity -- not as a result of comparing two balancing metrics as noted above. In the Applicants' invention, network layers may be assigned to "minimize expected system load" -- not solely to reduce load in a single cell. Specification at ¶42.

The Applicants' respectfully remind the Examiner that although claims may be interpreted broadly, any such interpretation must be consistent with the specification. As apparent from the discussion above, the Examiner's present interpretation of the claims is inconsistent with the specification.

In sum, because the combination of Newbury and Chepantier does not disclose or suggest the adjustment step, the Applicants respectfully submit that the subject matter of claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22-27, 29, 31, 32, 35 and 36 would not have been obvious to one of ordinary skill in the art at the time the present application was filed based on reading the disclosures of Newbury and Chepantier.

Accordingly, the Applicants respectfully request withdrawal of the rejections and allowance of claims 1-3, 5, 7, 8, 11-14, 16, 18, 19, 22-27, 29, 31, 32, 35 and 36.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC.

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